

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN E. ANDRUS MEMORIAL, INC.,
doing business as Andrus
on Hudson,

Plaintiff,

v.

07 Civ. 3432 (CLB) (MDF)

RICHARD F. DAINES, as
Commissioner of the New York
State Department of Health,

Defendant.

White Plains, N.Y.
June 25, 2008

Before:

THE HONORABLE MARK D. FOX,

Magistrate Judge

APPEARANCES

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Attorneys for Plaintiff

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ARIEL V. GORDON

OFFICE OF NEW YORK STATE ATTORNEY GENERAL

Attorneys for Defendant

JOHN PETER GASIOR

BARBARA K. HATHAWAY

Proceedings recorded by
electronic sound recording.

1 being recalled if they're needed again later.

2 MR. McGOVERN: Well, we may wish to recall them, your
3 Honor.

4 THE COURT: If you do, then you can pay their
5 transportation costs and issue subpoenas and do whatever else
6 you need to do.

7 Let's proceed.

8 I'll remind counsel again. This is not a trial.

9 Swear the witness, please. She has already been
10 sworn? Okay. Fine.

11 The Court reminds you, you're still under oath.

12 THE WITNESS: Yes, sir.

13 THE COURT: You may examine, Mr. McGovern.

14 BETSY BIDDLE,

15 called as a witness by the plaintiff, having been
16 previously sworn, testified further as follows:

17 DIRECT EXAMINATION

18 BY MR. McGOVERN:

19 Q Ms. Biddle, where are you employed?

20 A I'm employed at Andrus on Hudson.

21 Q And what is your position and title at Andrus on Hudson?

22 A I'm the Executive Director.

23 Q And just for the record, Andrus on Hudson is the name of --
24 doing business as for John E. Andrus Memorial, Inc.?

25 A Yes.

1 Q And the Andrus was founded when?

2 A It was started to be built in 1952, and it was opened in
3 1953.

4 Q And has it remained in operation continuously since 1953?

5 A Yes, it has.

6 Q Is it a licensed nursing home?

7 A It is.

8 Q And when was the Andrus issued its operating certificate to
9 operate a nursing home?

10 A In 1969.

11 Q Is there any limitation on the term of that operating
12 certificate?

13 A No, there isn't.

14 Q And where is your operating certificate at the Andrus
15 posted?

16 A It's posted on our informational board, which also has our
17 survey results and all the information that anybody who's
18 coming into the building would want to know about our facility.

19 Q Is that on the first floor where the entrance to the
20 facility is?

21 A Yes, it is, right off of the lobby.

22 Q And how many residents are being cared for at the Andrus
23 today?

24 A I believe it's 191.

25 Q And what is your approved bed capacity?

1 A 197.

2 Q Describe the age and condition of the residents being cared
3 for at the Andrus.

4 A Our average age is 89. They're frail, elderly people, with
5 the exception of approximately 19 to 22 residents who come for
6 short-term rehab after they've had either hip surgery or some
7 kind of fracture, or they've had a cardiac incident, or
8 something like that, where they plan on going back home.

9 Q And the balance of those beds would be long-term-care beds?

10 A Yes.

11 Q And do any of the residents at the Andrus suffer from
12 dementia?

13 A Yes, quite a few.

14 Q About how many?

15 A I think at last count, it was approximately 88.

16 Q And how long have the residents lived at the Andrus?

17 A The average length of stay is four years, but we do have
18 people who have lived there as long as 17, 18 years.

19 Q And what is the average age of the residents at the Andrus?

20 THE COURT: She said 88.

21 A 88, between 88 and 89 (unintelligible).

22 Q You heard testimony from Mr. Benjamin earlier about the
23 continuing care retirement community and the plans with Beth
24 Abraham to develop the campus there.

25 Do you recall his testimony?

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN E. ANDRUS MEMORIAL, INC.,

Plaintiff,

v.

07 CV. 3432 (CLB)

RICHARD F. DAINES, as Commissioner
of the New York State Department
of Health,

Defendant.

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U.S. Courthouse
White Plains, N.Y.
June 26, 2008
10:15 a.m.

Before: HON. MARK D. FOX,
United States Magistrate Judge

APPEARANCES

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Sue Ghorayeb, R.P.R., C.S.R.
Official Court Reporter

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1 THE CLERK: In the matter of Andrus versus New York
2 State Health Department, the Honorable Mark D. Fox presiding.

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12 A Through hospital referrals, through doctor referrals.

13 Q And are you aware, Ms. Biddle, that the defendant has
14 sought to issue an amended operating certificate with an
15 expiration date of June 30, 2008?

16 A Yes, I am.

17 Q And what would the Andrus do if an amended operating
18 certificate were issued?

19 A We would have to comply with the regulation of letting
20 everybody know that we have an amended operating certificate,
21 as well as post it.

22 MR. GASIOR: Objection.

23 THE COURT: Overruled.

24 A And we would tell the residents, the staff, the family
25 members, the doctors, our vendors, and the hospitals that are

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1 referring to us.

2 THE COURT: That's your understanding of the
3 regulations?

4 THE WITNESS: Yes, sir.

5 THE COURT: Go ahead.

6 Q In addition to the, to the regulations, are there any
7 other reasons that the Andrus would notify those individuals
8 that you have just identified?

9 A Yes. This is their home, and if their home has an end
10 point to it, because the operating certificate is going to
11 end and we would no longer be in operation, then these people
12 have a right to know what is happening.

13 Q And in the case of hospitals referring residents to the
14 Andrus, why would the Andrus inform hospitals referring

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15 residents to the Andrus of an amendment to their operating
16 certificate?

17 A Because, again, people who would be transferring to
18 Andrus, some of those people from the hospital would be
19 long-term patients, and this would become their home. And if
20 there's an end point to our operating certificate, then
21 people, I don't think their families -- the family members
22 would not choose to put their parent or loved one there for a
23 short period of time and then have to move them again. That
24 would be very traumatic.

25 Q And, Ms. Biddle, have you considered whether issuance of

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1 an amended operating certificate would have an impact on
2 Andrus' occupancy?

3 A Absolutely.

4 Q What is your understanding of that impact?

5 A I believe that the community would lose confidence in
6 our ability to stay open, because the amended operating
7 certificate would say that there is an end date, and
8 therefore we would have a problem with our occupancy.

9 Q And do you -- do you have any understanding about the
10 impact it would have on those residents living at the Andrus?

11 A I think they would be very distressed.

12 Q And do you have any understanding about what impact it
13 would have on the staff working at the Andrus?

14 A I think the same. They would be very distressed, and
15 this has been a place where people have worked for many
16 years, and residents have lived for many years, and I think
17 that it would have a tremendous negative impact.

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2 the due process claim, and right now it appears we are
3 talking about the procedural aspect of the due process claim,
4 requiring notice. Now, let's proceed.

5 Q Well, Ms. Biddle, has Andrus applied for any funding to
6 assist in either the conversion of Andrus, if it becomes, or
7 if it becomes necessary for Andrus to close as a result of
8 the Berger Commission's recommendations?

9 A Yes.

10 Q Where has it sought funding?

11 A Under HEAL 4. HEAL New York 4. Sorry.

12 Q Anyplace else?

13 A Not to my knowledge.

14 Q Okay. And what's the status of those applications?

15 A We never heard anything about them.

16 MR. GASIOR: Your Honor, if I might just have a
17 couple of minutes to --

18 THE COURT: Certainly. We will take a ten-minute
19 break.

20 (Recess)

21 THE COURT: Step up, please. The Court reminds
22 you, you are still under oath.

23 THE WITNESS: Yes, sir.

24 THE COURT: And you may resume your examination,
25 Mr. Gasior.

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1 CROSS-EXAMINATION

2 BY MR. GASIOR, CONTINUED:

3 Q Ms. Biddle, when the final Berger Commission report was
4 issued, did you inform the residents of Andrus about the

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5 issuance of that report?

6 A Yes.

7 Q And what did you tell them?

8 A I told them that -- we had, we had a large meeting with
9 not only the residents but the staff, and I told them that
10 there had been a report that had been issued called the
11 Berger Commission, and told them that there were
12 recommendations that they had made. However, it was only the
13 Department of Health that could implement those
14 recommendations, and that we were going to fight all -- that
15 we were going to fight on two fronts, legally, as well as
16 through talking with the Department of Health, and trying to
17 find out if there would be a middle ground for us.

18 Q Have you kept the residents and the staff apprised of
19 the developments in this litigation?

20 A Yes. Once a month.

21 Q Okay. Did you --

22 A Excuse me. You said the litigation?

23 Q Yes.

24 A Yes, I've told them that there's been a stay in effect.
25 Yes.

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1 Q Okay. And then did you also inform the family of the
2 residents of the same things that you have been telling --

3 A Absolutely.

4 Q -- the residents and staff?

5 A Mm-hmm.

6 Q And vendors also?

7 A Yes, sir.

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8 Q And are they being kept apprised of the events
9 transpiring in this litigation?

10 A The vendors are not being kept apprised on a monthly
11 basis, because I don't see them on a monthly basis. We had
12 talked to all of them to let them know, and we told them that
13 there was a stay in effect, and that if anything changed, we
14 would let them know. Excuse me.

15 Q Aside from the meeting that you had with the RAC, did
16 anyone from the Berger Commission or the RAC ever tell you
17 that Andrus was exempt from consideration by the Berger
18 Commission?

19 MR. MCGOVERN: Objection, asked and answered.

20 THE COURT: Sustained.

21 MR. GASIOR: She can't answer that?

22 THE COURT: It's been asked and answered.

23 Sustained.

24 MR. GASIOR: No further questions.

25 THE COURT: Anything further?

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1 MR. MCGOVERN: No, Your Honor.

2 THE COURT: I have a couple of questions.

3 First of all, you said, Miss Biddle, that after you
4 received the communication from Mr. Ustin asking you to come
5 to the RAC meeting --

6 THE WITNESS: Yes, sir.

7 THE COURT: -- you said you consulted with counsel?

8 THE WITNESS: Yes, sir.

9 THE COURT: After you consulted with counsel, you
10 went to the meeting?